

ITEM NO.45

COURT NO.2

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1) No(s).9060/2008

(From the judgement and order dated 20/08/2008 in CRLR No. 1356/2007 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

SANJAY SAINI & ORS.

Petitioner(s)

VERSUS

STATE OF PUNJAB & ANR.

Respondent(s)

(With office report)

WITH SLP(Cr1) NO. 1936 of 2009

(With appln.(s) for stay and office report)

Date: 12/11/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s) Mr. Devinder Singh Gurna, Adv.
In SR9060/08 &
R2 to 4 in SR1936/09

Mr. Irshad Ahmad, Adv.

Mr. Ghan Shyam Vasisht, Adv.

For Respondent(s) Dr. Sushil Gautam, Adv.
R2 in SR9060/08 Mr. Om Prakash Mishra, Adv.
& for petitioner Mr. Ramesh Sharma, Adv.
In SR1936/08

Mr. Ghan Shyam Vasisht, Adv.

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Mr. Kuldip Singh, Adv.
Mr. R.K. Pandey, Adv.
Mr. T.P. Mishra, Adv.
Mr. Sanjay Katyal, Adv.
Mr. H.S. Sandhu, Adv.

UPON hearing counsel the Court made the following
O R D E R

These two Special Leave Petitions, being
SLP(C)Nos. 9060 of 2008 and 1936 of 2009, have been
filed by Sanjay Saini & Ors. and Darshana Devi,
against the same judgment and order passed by the

Punjab & Haryana High Court on 20th August, 2008, in Criminal Revision Nos. 1356 of 2007 and 1695 of 2007.

The petitioner, Darshana Devi, in SLP(Crl.)No.1936 of 2009, filed a complaint against the petitioners in SLP(Crl.)No.9060 of 2008, of having forged a cheque belonging to the firm in respect of which all of the petitioners were partners and which ultimately was dishonoured by the payee's bank. As a result, the complainant, Smt. Darshana Devi and the petitioners in the other Special Leave Petition, were prosecuted under Section 138 of the Negotiable Instruments Act, 1881, and were ultimately acquitted. However, on

the basis of certain observations made by the trial court, Darshana Devi filed a complaint, as

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indicated hereinbefore against the petitioners in SLP(Crl.)No.9060 of 2008 under Sections 467, 471, 120-B IPC.

The charge was framed against the accused persons under the aforesaid provisions.

Thereafter, in revision, the learned Sessions Judge quashed the charge under Sections 467 and 471 and instead directed charge to be framed under Sections 195 and 120B IPC.

The said order was challenged by both the parties in the High Court.

While

Sanjay Saini and Ors. challenged the framing of charge under Section 195 IPC, the complainant,

Darshana Devi, challenged the order of the Sessions Judge dropping charges against Sanjay Saini & Ors. under Sections 467 and 471 IPC.

It is against the

said order passed by the High Court that these two Special Leave Petitions have been filed.

We have heard learned counsel appearing for the parties and as far as the Special Leave Petition filed by Sanjay Saini & Ors.is concerned,

we see no reason to interfere with the order passed by the High Court, having regard to the fact that the High Court came to the conclusion that the Session Judge had rightly held that no case had been made out against Sanjay Saini & Ors. under Sections 467 and 471 IPC and that Sanjay Saini had allegedly committed an offence under Section 195 IPC, whereas the others were also liable under Section 120B IPC. That Darshana Devi, the complainant, was prosecuted on account of the cheque which was ultimately dishonoured, is a

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matter of fact, which is to be considered at the time of trial. Accordingly, the question as to whether the cheque had been issued with a deliberate intention to create false evidence to implicate Darshana Devi in the proceedings under Section 138 of the Negotiable Instruments Act, 1881, is to be considered when the trial is conducted.

As far as the Special Leave Petition filed by Darshana Devi is concerned, we are equally convinced that the High Court did not commit any error in dropping the charges under Sections 467 and 471 IPC on the materials before the court. However, we must also point out at this stage that the order dated 9th February, 2006, passed by the High Court in Criminal Revision No.2043 of 2005, filed by Darshana Devi, wherein certain observations have been made, were not challenged or questioned by Sanjay Saini and others or even Darshana Devi. Accordingly, the same has attained finality. However, we also make it clear that such observations will be deemed to have been made prima facie for the purposes of the said revision and will not stand in the way of any evidence that may be brought or adduced with regard to the transaction in question.

The Special Leave Petitions are dismissed.

(Sheetal Dhingra)
Court Master

(Juginder Kaur)
Court Master